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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,426	09/27/2001	Marcus C. Merriman	47097-01106USC1	4436
56356 7590 02/23/2007 PACTIV CORPORATION c/o JENKENS & GILCHRIST 225 WEST WASHINGTON STREET SUITE 2600 CHICAGO, IL 60606			EXAMINER CHAWLA, JYOTI	
			ART UNIT 1761	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	02/23/2007	PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

09/965,426

Applicant(s)

MERRIMAN ET AL.

Examiner

Jyoti Chawla

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 38-56, 76-86 and 119-168 is/are pending in the application.
- 4a) Of the above claim(s) 122, 141 and 160 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 56, 76-86, 119-121, 123-140, 142-159 and 161-168 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/22/06</u> | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1761

### **DETAILED ACTION**

Applicant's amendment filed on November 22, 2006 has been entered. Claims 38, 76, 78, 119, 121, 140, 157 have been amended. Claims 38-56, 76-86 and 119-168 remain in the application. Claims 122, 141 and 160 have been withdrawn and Claims 38-56, 76-86, 119-121, 123-140, 142-159, and 161-168 are examined in the current office action.

### ***Claim Objections***

Objections to claims 38, 119 and 138, identified in the office action Mailed August 18, 2006 have been withdrawn in light of applicant's amendments dated November 22, 2006.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 38-56, 76-86, 119-168 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The amended claims 38, 76, 119 and 138 and 157 include the phrase "sealing the second layer to at least one of *the group consisting* of the package and the first layer". There is no support for the phrase "at least one of the group consisting of " in the original disclosure. The only support found for the sealing of the second layer is in claim 38 of the original disclosure which states "sealing the first layer to the package; and sealing the second layer to at least one of the package and the first layer" which is not the same as the group consisting of the package and the first layer as recited by the applicant.

Art Unit: 1761

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim rejections under 112(second paragraph) of claims 38-56, 76-86, 119-168 for having improper Markush group language have been withdrawn in light of applicant's amendments.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Actions.

(I) Claims 38, 40-56, 76, 78-86, 119, 121, 123-138, 140, 142-157, 159, 161-168 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockley III et al. (US 5686127) in view of Koch et al. (US 3459117) and Woodruff et al. (US 4522835) and Shaklai (US 6042859).

References and rejections are incorporated herein as cited in the previous office actions mailed August 12, 2005, February 24, 2006 and August 18, 2006.

The amendments to claims constitute removal of the term "the acts of" from the preamble of claims 38, 119, and 138 in response to the objection raised in the office action dated August 18, 2006.

Claims 38, 76, 119, 138 and 157 have further been amended to change the term "sealing the second layer to at least one of the package and the first layer" in the body of the independent claims. The amendment "sealing the second layer to at least one of the group consisting of the package and the first layer" does not constitute a patentable difference in the claimed invention and the rejections in the office actions stated above are still maintained for reasons of record.

Art Unit: 1761

(II) Claims 39, 77, 120, 139, and 158 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockley III et al. (US 5686127) in view of Koch et al. (US 3459117) and Woodruff et al. (US 4522835) and Shaklai (US 6042859) as applied to claims 38, 40-56, 76, 78-86, 119, 121, 123-138, 140, 142-157, 159, 161-168 above, further in view of Garwood (US 5629060).

References and rejections are incorporated herein as cited in the previous office action mailed August 12, 2005, February 24, 2006 and August 18, 2006 are still maintained for reasons of record.

### ***Response to Arguments***

Objections to claims 38, 119 and 138, identified in the office action Mailed August 18, 2006 have been withdrawn in light of applicant's amendments dated November 22, 2006.

Applicant's arguments and declaration dated November 22, 2006 have been fully considered but they are not persuasive and the rejections are maintained for the reasons of record.

### ***Terminal Disclaimer***

The terminal disclaimer filed on December 19, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of a patent granted on any one of the Application numbers 10/190375, 10/424,460 and 09/915150 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Double Patenting***

The provisional double patenting rejections of the current application 09/965426 with copending applications 10/190375, 10/424,460 and 09/915150 made in the office action dated August 18, 2006 have been withdrawn in light of the terminal disclaimer received December 19, 2006, disclaiming the terminal part of the patent granted on the instant application beyond the term of co-pending second applications 10/190375, 10/424,460 and 09/915150.

***Remarks/ Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jyoti Chawla  
Examiner  
Art Unit 1761



**KEITH HENDRICKS**  
**PRIMARY EXAMINER**